

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Church Universal & Triumphant Inc.

OBJECTOR: United States of America (USDA Forest Service)

CASE 43B-0925-R-2023

43B 190984-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The United States of America (USDA Forest Service) objected to this claim. On November 13, 2023 the parties filed an Amended Stipulation To Resolve Objections. The

requested changes to this claim include expansions of the point of diversion and means of diversion. Point of diversion and means of diversion are not at issue. Therefore, this is a motion to amend point of diversion and means of diversion pursuant to section 85-2-233(6), MCA. On February 5, 2024 the Order For Newspaper Publication And Personal Service was issued. On February 5, 2024 the Church Universal & Triumphant Inc. filed its Service Of Short Form Public Notice for the people for whom personal service was required. On April 5, 2024 the Church Universal & Triumphant Inc. filed its Notice Of Filing Affidavits Of Publication for the newspapers for which notice of publication was required. April 8, 2024 is the deadline specified in the Notices for others to file a response to the motion to amend. No responses were filed. This documentation is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including claimants amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The changes requested in the motion to amend arise out of the same conduct,

transaction, or occurrence specified on the original Statement of Claim, are based on the same operative facts specified in the Statement of Claim, and merely make more specific that which was already claimed on the original Statement of Claim.

2. The Preliminary Decree states that the point of diversion and means of diversion are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SESENW	24	8S	7E	PARK

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

The point of diversion and means of diversion should be:

<u>GOV'T LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
6	SW	24	8S	7E	PARK

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

SESENW	24	8S	7E	PARK
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Diversion Means: LIVESTOCK DIRECT FROM SOURCE

SWNE	24	8S	7E	PARK
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Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2	NE	24	8S	7E	PARK
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Diversion Means: LIVESTOCK DIRECT FROM SOURCE

6	SW	24	8S	7E	PARK
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Diversion Means: DITCH
Ditch Name: ARMSTRONG DITCH NO. 1

6	SW	24	8S	7E	PARK
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Diversion Means: DITCH
Ditch Name: ARMSTRONG DITCH NO. 2

3. The Preliminary Decree states that the place of use is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
E2NW	13	8S	7E	PARK
NE	24	8S	7E	PARK
N2N2SE	24	8S	7E	PARK

The place of use should be:

<u>GOV'T LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
6	SW	24	8S	7E	PARK
	E2NW	24	8S	7E	PARK

	SWNE	24	8S	7E	PARK
2	NE	24	8S	7E	PARK
	E2SW	13	8S	7E	PARK
	E2W2SW	13	8S	7E	PARK
	SWNW	13	8S	7E	PARK

4. The Preliminary Decree also includes the following notice remark:

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

This remark provides notice of this change made prior to issuance of the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

CONCLUSIONS OF LAW

1. The notice requirements for a motion to amend claim specified in section 85-2-233(6), MCA, have been met.
2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).
3. The Amended Stipulation To Resolve Objections is sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree.

RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the motion to amend this claim and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 190984-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHURCH UNIVERSAL & TRIUMPHANT INC
63 SUMMIT WAY
GARDINER, MT 59030-9314

Priority Date: JANUARY 1, 1900

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: MULHERIN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	6	SW	24	8S	7E	PARK
Period of Diversion: OCTOBER 1 TO APRIL 1						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2		SESENW	24	8S	7E	PARK
Period of Diversion: OCTOBER 1 TO APRIL 1						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3		SWNE	24	8S	7E	PARK
Period of Diversion: OCTOBER 1 TO APRIL 1						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4	2	NE	24	8S	7E	PARK
Period of Diversion: OCTOBER 1 TO APRIL 1						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
5	6	SW	24	8S	7E	PARK
Period of Diversion: OCTOBER 1 TO APRIL 1						
Diversion Means: DITCH						
Ditch Name: ARMSTRONG DITCH NO. 1						
6	6	SW	24	8S	7E	PARK
Period of Diversion: OCTOBER 1 TO APRIL 1						

Diversion Means: DITCH
Ditch Name: ARMSTRONG DITCH NO. 2
Period of Use: OCTOBER 1 TO APRIL 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		6	SW	24	8S	7E	PARK
2			E2NW	24	8S	7E	PARK
3			SWNE	24	8S	7E	PARK
4		2	NE	24	8S	7E	PARK
5			E2SW	13	8S	7E	PARK
6			E2W2SW	13	8S	7E	PARK
7			SWNW	13	8S	7E	PARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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THE POINT OF DIVERSION AND PLACE OF USE OF THIS WATER RIGHT ARE LIMITED TO PRIVATE PROPERTY WITHIN THE LISTED LEGAL LAND DESCRIPTION.

THIS WATER RIGHT INCLUDES STOCKWATER DIVERTED INTO THE ARMSTRONG DITCHES AND LIVESTOCK DIRECT FROM SOURCE.